

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS  
CIVIL ACTION NO. 04 11539 JLT

---

WALTER STICKLE, ANTHONY	)
CALIENDO, JOHN PITINGOLO, and	)
DANIEL FISHER,	)
Plaintiffs	)
	)
v.	)
	)
ARTHUR ORFANOS,	)
Defendant	)

---

**SUPPLEMENT TO AND UPDATE TO  
“DEFENDANT’S OBJECTION TO AND OPPOSITION TO PLAINTIFFS’  
PROPOSED “ORDER” FOR PRELIMINARY INJUNCTION”**

NOW comes Defendant, Plaintiff in Counterclaims (Defendant), in accordance with all applicable rules, regulations and procedures, as well as the Honorable Judge Tauro’s verbal direction on September 29, 2004, to respectfully supplement and update his original October 7, 2004 objection to and opposition to Plaintiff’s proposed “ORDER” for Preliminary Injunction (Order) as follows:

1. Said Order cannot now be granted because today the United States Patent and Trademark Office (USPTO) electronically notified Defendant USPTO “... refuses registration [of Defendant’s proposed trademark of PINK VOYD] because the applicant’s mark, when used on or in connection with the identified goods/services, so resembles the mark in U.S. Registration ... ‘PINK FLOYD’ ....”; Plaintiffs thus too have no actionable claim to such intellectual property. 15 USC §1052(d); TMEP §§1207.01 *et seq.*; See also, e.g., In re E.I.

DuPont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973); *See Exhibit A.*

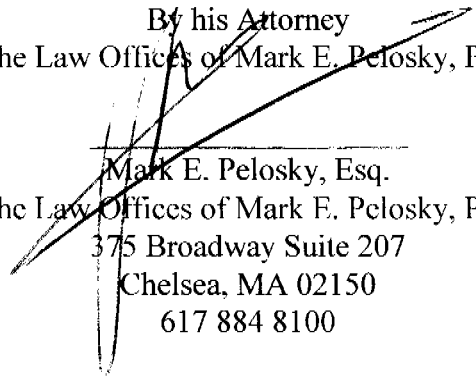
2. Said Order cannot now be granted because this Honorable Court must not any longer accept and tolerate Plaintiffs' continued violation of intellectual property rights of others, including but not limited to: the actual Pink Floyd music group, *See Paragraph 38 – 40 of Defendant's Affidavit*; EMKA Productions, *See Paragraph 46 – 48 of Defendant's Affidavit*; Kurzweil, *See Paragraph 41 of Defendant's Affidavit*; Playboy, *See Paragraph 51 of Defendant's Affidavit*, and *Exhibits 23, 24*; 20<sup>th</sup> Century Fox, *See Paragraph 52 of Defendant's Affidavit*, and *Exhibit 24*; Defendant, *See Defendant's Affidavit and Counterclaims*; Other, *Id.*
3. Said Order cannot now be granted and Plaintiffs must be Ordered to cease and desist from any further contact with, harassment of and interference with Defendant and Defendant's family forthwith.

In further support hereof, please see Defendant's Answer to Plaintiffs' Complaint and Counterclaims, as well as all documents, Exhibits and other attached thereto and incorporated therein; See also "DEFENDANT'S OBJECTION TO AND OPPOSITION TO PLAINTIFFS' PROPOSED "ORDER" FOR PRELIMINARY INJUNCTION."

WHEREFORE Defendant respectfully requests this Honorable Court consider the aforementioned points, as well as Defendant's oral arguments on September 29, 2004, and Order fair and equitable relief herein.

Respectfully submitted,

Defendant  
By his Attorney  
The Law Offices of Mark E. Pelosky, P.C.

  
\_\_\_\_\_  
Mark E. Pelosky, Esq.  
The Law Offices of Mark E. Pelosky, P.C.  
375 Broadway Suite 207  
Chelsea, MA 02150  
617 884 8100

October 27, 2004

Subj: **TRADEMARK APPLICATION NO. 78395926 - PINK VOYD - N/A**  
Date: 10/27/04 2:46:34 PM Eastern Daylight Time  
From: **THEOR&SONS, INC.**  
To: **THEOR&SONS, INC.**  
File: **75217644P0010F002.zip (140997 bytes) DL Time (TCP/IP): < 1 minute**  
Sent from the Internet

## UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 78/395926

APPLICANT: Orfanos, Arthur

**\*78395926\***

**CORRESPONDENT ADDRESS:**

Orfanos, Arthur  
54 Egerton Rd  
Arlington, MA 02474

**RETURN ADDRESS:**

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

MARK: PINK VOYD

CORRESPONDENT'S REFERENCE/DOCKET NO: N/A

**CORRESPONDENT EMAIL ADDRESS:**

TheMood2@aol.com

Please provide in all correspondence:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

## OFFICE ACTION

**TO AVOID ABANDONMENT, WE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF OUR MAILING OR E-MAILING DATE.**

Serial Number 78/395926

The assigned examining attorney has reviewed the referenced application and determined the following.

**SEC. 2(d) REFUSAL-CLASSES 9, 16 AND 41 ONLY**

The examining attorney refuses registration under Trademark Act Section 2(d), 15 U.S.C. §1052(d), because the applicant's mark, when used on or in connection with the identified goods/services, so resembles the mark in U.S. Registration No. 2194702 as to be likely to cause confusion, to cause mistake, or to deceive. TMEP §§1207.01 *et seq.* See the enclosed registration.

The marks of the parties are very similar-PINK VOYD versus PINK FLOYD. The respective goods and services

Wednesday, October 27, 2004 America Online: TheMood2

EXHIBIT  
A

include audio and video cassette, recorder record players DCD players, records discs, featuring musical entertainment, books, magazines relating to musical entertainment and live musical band performances. Note: registrant's Sec. 8 & 15 affidavit has not yet been received.

The Court in *In re E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973), listed the principal factors to be considered in determining whether there is a likelihood of confusion under Section 2(d). Any one of the factors listed may be dominant in any given case, depending upon the evidence of record. In this case, the following factors are the most relevant: similarity of the marks, similarity of the goods/services, and similarity of trade channels of the goods/services. TMEP §§1207.01 *et seq.*

The examining attorney must resolve any doubt regarding a likelihood of confusion in favor of the prior registrant. *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir., 1988). TMEP §§1207.01(d)(i).

Any goods or services in the registrant's normal fields of expansion must also be considered in order to determine whether the registrant's goods or services are related to the applicant's identified goods or services for purposes of analysis under Section 2(d). *In re General Motors Corp.*, 196 USPQ 574 (TTAB 1977). The test is whether purchasers would believe the product or service is within the registrant's logical zone of expansion. *CPG Prods. Corp. v. Perceptual Play, Inc.*, 221 USPQ 88 (TTAB 1983); TMEP §1207.01(a)(v).

Although the examining attorney has refused registration, the applicant may respond to the refusal to register by submitting evidence and arguments in support of registration.

Please note that there is no required format or form for responding to this Office action. However, applicant should include the following information on all correspondence with the Office: (1) the name and law office number of the examining attorney; (2) the serial number of this application; (3) the mailing date of this Office action; and, (4) applicant's telephone number.

When responding to this Office action, applicant must make sure to respond in writing to each refusal and requirement raised. If there is a refusal to register the proposed mark, then applicant may wish to argue against the refusal, i.e., explain why it should be withdrawn and why the mark should register. If there are other requirements, then applicant should simply set forth in writing the required changes or statements and request that the Office enter them into the application record. Applicant must also sign and date its response.

#### **NOTICE: TRADEMARK OPERATION RELOCATING OCTOBER AND NOVEMBER 2004**

The Trademark Operation is relocating to Alexandria, Virginia, in October and November 2004. Effective October 4, 2004, all Trademark-related paper mail (except documents sent to the Assignment Services Division for recordation, certain documents filed under the Madrid Protocol, and requests for copies of trademark document(s)) must be sent to:

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

Applicants, registration owners, attorneys and other Trademark customers are strongly encouraged to correspond with the USPTO online via the Trademark Electronic Application System (TEAS), at

Wednesday, October 27, 2004 America Online: TheMood2

/John C. Tingley/  
Trademark Examining Attorney  
Law Office 106  
703-308-9106 x-266 fax 703 746 8106  
6:30 a.m. to 3:00 p.m

To reach the undersigned attorney by telephone after November 1, 2004, please call (571) 272 - 9334. Thank you.

**How to respond to this Office Action:**

You may respond formally using the Office's Trademark Electronic Application System (TEAS) Response to Office Action form (visit [www.uspto.gov/V2.0/oa241/241Z1334.htm](http://www.uspto.gov/V2.0/oa241/241Z1334.htm) and follow the instructions therein, but you must wait until at least 72 hours after receipt if the office action issued via e-mail). PLEASE NOTE: Responses to Office Actions on applications filed under the Madrid Protocol (Section 66(a)) CANNOT currently be filed via TEAS.

To respond formally via regular mail, your response should be sent to the mailing Return Address listed above and include the serial number, law office and examining attorney's name on the upper right corner of each page of your response.

To check the status of your application at any time, visit the Office's Trademark Applications and Registrations Retrieval (TARR) system at [www.uspto.gov/](http://www.uspto.gov/)

For general and other useful information about trademarks, you are encouraged to visit the Office's web site at [www.uspto.gov/brand/brand.htm](http://www.uspto.gov/brand/brand.htm)

**FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT THE ASSIGNED EXAMINING ATTORNEY.**

